

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of San Diego Gas & Electric Company
(U 902 E) for Authorization to Recover Costs Related to
the 2007 Southern California Wildfires Recorded in the
Wildfire Expense Memorandum Account (WEMA)

Application 15-09-010
(Filed September 25, 2015)

**SAN DIEGO GAS & ELECTRIC COMPANY'S (U 902 E) RESPONSE TO
MOTION FOR LIMITED PARTY STATUS AND MOTION TO STRIKE OF
COX COMMUNICATIONS CALIFORNIA, LLC AND
COX CALIFORNIA TELECOM, LLC**

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July 10, 2017

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Pursuant to Rule 11.1(e) the Commission’s Rules of Practice and Procedure, San Diego Gas & Electric Company (“SDG&E”) responds to (1) the “Motion for Limited Party Status of Cox Communications, Inc. in Phase I” (“Cox Motion for Limited Party Status”); and (2) the “Motion to Strike of Cox Communications California, LLC and Cox California Telecom, LLC” (“Cox Motion to Strike”) that were submitted in this proceeding on July 5, 2017. As discussed below, both Cox motions should be denied.

Cox’s basic argument is wholly disingenuous. According to Cox, SDG&E’s interpretation of the facts and evidence regarding the broken Cox lashing wire and Cox’s pre-fire inspections amount to false statements because SDG&E relies, in large part, on the conclusions of Cal Fire and the CPSD, which Cox contends have not been definitively proven and adopted by a trier of fact.¹ Yet Cox advances its own interpretation of the facts and evidence regarding the broken Cox lashing wire and Cox’s pre-fire inspections, which (as Cox admits)² has also not

¹ See, e.g., Cox Motion for Limited Party Status, pp. 2-4; Cox Motion to Strike, p. 7-12.

² See, e.g., Cox Motion to Strike, pp. 10, 14.

been definitively proven or adopted by a trier of fact. Cox nevertheless claims that its unproven theory (and the fact that it disputes the theory of SDG&E, Cal Fire and CPSD) serves as a basis to strike portions of SDG&E's testimony and briefs. This illogical and patently self-serving argument should not be entertained. Nor should Cox be permitted to expand the record in this proceeding, with new facts and arguments, at this stage.

I. COX'S MOTION FOR LIMITED PARTY STATUS SHOULD BE DENIED

Cox's Motion for Limited Party Status is untimely. In this proceeding, the prepared testimony was submitted in 2015 and 2016, evidentiary hearings were conducted in January 2017, and briefs were submitted on March 24 and April 14, 2017. The evidentiary record in Phase 1 of this proceeding is now closed and complete. But Cox nevertheless seeks to introduce facts and arguments that support its theories related to the Guejito Fire, while accusing SDG&E of improperly relying on facts and arguments that are in the record and that are available for the Commission to weigh alongside the other record evidence, including evidence introduced by the Office of Ratepayer Advocates ("ORA"). Under similar circumstances, the Commission has denied such untimely requests for party status.³ Furthermore, Cox has failed to request that the Commission reopen the record, yet it argues about statements in several deposition transcript excerpts that it attached to or referenced in its Motion to Strike. That is clearly improper.

Moreover, Cox has been on notice of this proceeding since its inception. SDG&E served its September 25, 2015 Application in this proceeding on the service list from its 2009 Wildfire

³ See Administrative Law Judge's Ruling Denying Southern California Edison Company Motion for Party Status at 1-2, A.12-05-020 (July 20, 2016); *see also* Administrative Law Judge's Ruling . . . Denying the California Building Industry Association, Solar Energy Industries Association, and the Vote Solar Initiative Motions for Party Status at 3, A.12-11-001 (May 3, 2013); *see also* Administrative Law Judge's Ruling Denying Party Status to the Southern California Gas Company at 2-3, A.07-04-013 (Jan. 5, 2010); *see also* D.10-07-042 at 64, 2010 Cal. PUC LEXIS 287 at *96 (denying a motion for party status "because there are no further formal opportunities for parties to participate in the application before the Commission acts on the proposed decision.").

Expense Balancing Account Application (A.09-08-010), which included Cox’s outside counsel, Davis Wright Tremaine LLP, the author of Cox’s motions.⁴ The Commission also noticed the Application in its September 30, 2015 Daily Calendar publication. Cox nevertheless chose not to participate.

Cox does not even attempt to demonstrate good cause for seeking party status at this juncture of the proceeding. Cox states that SDG&E’s Application characterized the Guejito Fire as resulting from contact between the Cox lashing wire and SDG&E’s conductor, a “characterization” with which Cox “does not take issue.”⁵ But Cox then suggests that it was “surprised to learn” that SDG&E discussed the broken lashing wire and Cox inspections in its post-hearing briefs, as though that “surprise” somehow excuses its failure to seek party status in a timely manner.⁶ As a sophisticated business entity that has participated in Commission proceedings, Cox was certainly aware that a variety of arguments regarding the Guejito Fire were likely to be made in this proceeding, and that if it believed its business reputation or interests could be implicated, it should seek party status. It failed to do so. Cox’s proposal to disrupt this proceeding is thus unwarranted, unduly prejudicial to SDG&E, and should not be entertained.

II. COX’S MOTION TO STRIKE SHOULD BE DENIED

Cox contends that causation of the Guejito Fire is outside the scope of this proceeding.⁷ As an initial matter, SDG&E notes that it was ORA that introduced issues of causation into the

⁴ See “San Diego Gas & Electric Company’s (U 902 E) Notice of Availability of its Application for Authorization to Recover Costs Related to the 2007 Southern California Wildfires recorded in the Wildfire Expense Memorandum Account” at Attachment 1.

⁵ Cox Motion for Limited Party Status, pp. 2-3.

⁶ *Id.*

⁷ Cox Motion to Strike, pp. 6-7.

record via Mr. Stannik's testimony,⁸ in which ORA claimed that the Guejito Fire was caused by an inadequate clearance between SDG&E's and Cox's facilities. ORA highlighted certain portions of the Cal Fire Guejito Fire Investigation Report, and the CPSD's findings, but did not (in SDG&E's view) present the whole picture with respect to those reports and findings. Thus, in rebuttal testimony, SDG&E witness Darren Weim responded to ORA and noted that ORA had not meaningfully discussed significant portions of Cal Fire's and CPSD's findings with respect to how the contact between SDG&E's and Cox's facilities had occurred, including findings regarding the broken lashing wire issue.⁹ If Cox truly believed that causation was outside the scope of this proceeding, it would have moved to strike ORA's testimony and related arguments on causation. That fact that Cox did not do so shows that its true concern is silencing theories of causation that it opposes. To the extent the Commission does make findings regarding causation, it would be wholly inappropriate to strike, at this juncture, the testimony and arguments of the applicant in favor of the alleged reputational concerns of a non-party. In any event, if Cox believes causation is not an issue on which the Commission will make findings, it has no reason to seek to strike SDG&E's arguments or testimony or otherwise be concerned about the outcome of this proceeding.

Cox repeatedly takes issue with SDG&E statements to the effect that there "is no dispute that the Guejito Fire was caused by the fact that Cox's lashing wire broke and was blown upwards into SDG&E's conductors, creating arcs and starting the fire."¹⁰ Cox claims that it does

⁸ See Exh. ORA-01 (Stannik Direct), pp. 17-21.

⁹ "San Diego Gas & Electric Company's (U 902 E) Phase 1 Opening Brief," p. 61; *see also* Exh. SDGE-12 (Weim Rebuttal), pp. 3-10.

¹⁰ See Cox Motion to Strike, p. 3 (*citing* "San Diego Gas & Electric Company's (U 902 E) Phase 1 Opening Brief," pp. 3, 59).

dispute such statements, which in its view renders SDG&E's statements false.¹¹ This argument takes SDG&E's arguments out of context, ignores portions of the record, and should be disregarded.

SDG&E made statements about the lack of dispute regarding the broken lashing wire in the context of *this case*, and the arguments that were made about the facts and evidence by the parties to this case, including ORA.¹² While Cox was not a party to this proceeding and did not submit evidence or arguments, SDG&E did acknowledge Cox's theory of ignition – according to which the entire intact Cox bundle of facilities made contact with SDG&E's powerlines¹³ – in various submissions in this proceeding, even though it disagreed with that theory. For instance, as summarized in its Opening Brief, SDG&E witness Mr. Weim discussed the Cox and other theories:

In his rebuttal testimony, Mr. Weim reviewed the evolution of CPSD's position on the Guejito Fire ignition over the course of the Guejito Fire OII in I.08-11-007 and concluded that CPSD maintained its position regarding the broken lashing wire over time. The CPSD rejected a theory advanced by Cox that the lashing wire broke after making contact with SDG&E's conductors because that theory would necessarily mean that the entire Cox bundle (fiber optic cable, messenger wire, lashing wire) had made contact with the conductors, but there was no evidence of any damage to those other Cox facilities.¹⁴

¹¹ Cox Motion to Strike, pp. 3, 7-8.

¹² "San Diego Gas & Electric Company's (U 902 E) Phase 1 Opening Brief," pp. 59-63.

¹³ *See, e.g.*, Cox Motion to Strike, p. 3.

¹⁴ "San Diego Gas & Electric Company's (U 902 E) Phase 1 Opening Brief," p. 61; *see also* Exh. SDGE-12 (Weim Rebuttal), pp. 3-10.

Thus, there is no merit to Cox's allegation that SDG&E has wrongly "suggest[ed] that there are no other theories" of the fire ignition.¹⁵ Contrary to Cox's allegations, SDG&E has openly acknowledged the Cox theory.

With respect to Cox's broken lashing wire, the primary evidence on which SDG&E relied was Cal Fire's Guejito Fire Investigation Report. As SDG&E discussed in its Phase 1 Opening Brief:

In the Guejito Fire Investigation Report, the Cal Fire investigator noted that the fire was first observed at 1:00 am on October 22, 2007 and found that "the fire was determined to have started when energized power lines and lashing wire from a Cox Communications cable came in contact with each other." The investigator indicated his opinion that this contact occurred "sometime during the wind event." Cal Fire further concluded that it was the broken lashing wire that caused the contact since the lashing wire "unwound and made contact with a [sic] powerline conductor, causing an arc." The powerlines in the span at issue were 12 kV distribution lines, and the Cox facilities below the powerlines consisted of a lashing wire, which bound together a Cox fiber optics line and messenger wire. During the investigation, the investigator "noticed the lashing [wire] had come undone in several locations;" that "some of the lashing [wire] was dangling from the Cox cable line; the ends about 10-12 feet from the ground;" that "some of the same type wire lashing lying on the ground in the origin area;" that there was damage to the south SDG&E powerline; and that there were "three spots" where the lashing wire "was fused to the power line."¹⁶

SDG&E further discussed Cal Fire's findings later in its Opening Brief, along with the CPSD's rationale for adopting and elaborating those findings in its own reports and testimony in the

¹⁵ See Cox Motion to Strike, p. 6; *see also id.*, p. 14.

¹⁶ See "San Diego Gas & Electric Company's (U 902 E) Phase 1 Opening Brief," p. 8 (internal citations omitted).

Guejito Fire OII in I.08-11-007.¹⁷ On behalf of SDG&E, Mr. Weim assessed the conclusions of Cal Fire and the CPSD and concurred with their findings regarding the broken lashing wire.¹⁸

In Cox's view, however, SDG&E has made false statements by relying on this evidence.¹⁹ In other words, Cox is effectively contending that the conclusions of Cal Fire and the CPSD are false, and that it was thus false and misleading for SDG&E to repeat those statements. SDG&E maintains that the preponderance of the evidence supports the conclusions regarding the broken lashing wire reached by Cal Fire and CPSD, and that Cox has failed to show they were false.

In attempting to show that the Cal Fire and CPSD conclusions were false, Cox references deposition excerpts of Cal Fire Investigator Gary Eidsmoe and CPSD Investigator Mahmoud Intably.²⁰ While Cox asserts that statements in these depositions show that there is no basis for the theory that Cox's lashing wire was broken prior the Guejito Fire ignition, that is merely a legal argument based on Cox's interpretation of the evidence. At his deposition, Mr. Eidsmoe testified that it was his opinion, as an investigator, that the lashing wire broke before the ignition and was the cause of the ignition.²¹ Furthermore, those depositions were taken in late 2008 and early 2009, and Cox attached them to its May 2009 testimony in I.08-11-007.²² Subsequently,

¹⁷ *Id.*, pp. 60-63.

¹⁸ *Id.*, p. 62.

¹⁹ Cox Motion to Strike, p. 4.

²⁰ Cox Motion to Strike, pp. 8-10.

²¹ *See* Exhibit J to Cox's Motion to Strike, pp. 49-50.

²² ORA included Cox's May 2009 testimony submission in I.08-11-007 in Exh. ORA-05, although it appears that the Cox attachments to that testimony were not included in the ORA exhibit.

the CPSD submitted rebuttal testimony in which it (and Mr. Intably) continued to take the position that Cox's lashing wire had broken and made contact with SDG&E's conductors.²³ Cox seeks to brush aside these inconvenient facts by claiming that if a hearing had been held in the Guejito Fire OII, Mr. Intably and Mr. Eidsmoe (who was not even a witness in that case) would have been cross-examined regarding their conclusions.²⁴ But what Cox cannot show is that either Mr. Intably or Mr. Eidsmoe would have changed their conclusion, or that Cox would have successfully undermined them. Cox's speculation about what might have happened does not render its interpretation of the evidence the only possible true interpretation.

With respect to Cox's purported inspections of its facilities in the span in question, Cox once again seeks to introduce "facts" that are not part of the record in the form of an excerpt of a civil litigation deposition of a Cox employee.²⁵ The record evidence in this proceeding, however, contradicts Cox's extra-record material. For instance, in CPSD's Rebuttal Testimony in the Guejito Fire OII, CPSD maintained its position that Cox had not adequately inspected its facilities, and that Cox admitted in a data request response that it had not inspected its facilities after their initial installation in 2001.²⁶

Also misguided are Cox's claims that SDG&E has hypocritically relied on evidence it previously repudiated.²⁷ Cox bases these claims on arguments SDG&E made in response to protests to the Application, but it presents an incomplete and misleading characterization of these arguments and how this issue evolved in this proceeding.

²³ CPSD's June 2009 Rebuttal Testimony in I.08-11-007 is also included in Exh. ORA-05.

²⁴ Cox Motion to Strike, p. 10.

²⁵ Cox Motion to Strike, pp. 11-12.

²⁶ See CPSD's June 2009 Rebuttal Testimony in I.08-11-007, pp. 1-15—1-16. This testimony is included in Exh. ORA-05.

²⁷ Cox Motion to Strike, pp. 3-4, 12-13.

In their protests, certain parties made arguments based on the CPSD’s allegations in the 2007 Wildfire OIIs (I.08-11-006 and I.08-11-007).²⁸ Certain protestants also argued that the entire record from the 2007 Wildfire OIIs should be imported wholesale into the record in this proceeding.²⁹ In its reply to protests, SDG&E noted that CPSD’s allegations had not been adopted by the Commission since the OIIs were resolved through settlement.³⁰ SDG&E also objected to automatically deeming the record in the OIIs as part of the record in this proceeding and pointed out various evidentiary problems with such an approach, as Cox highlights in its Motion to Strike.³¹

But Cox omits that SDG&E also acknowledged in its reply to protests that “there may be appropriate uses for the OII materials.”³² Further, in its Prehearing Conference Statement, SDG&E elaborated that “if such material is to be used at all, it should be introduced and admitted into the record on a case-by-case basis, just as any other testimony and evidence is received into the record in a Commission proceeding.”³³ SDG&E simply wanted an opportunity to be able to build a record in this case and to test evidence from the OIIs, as appropriate. Following discussion of this issue at the Prehearing Conference, the Scoping Memo addressed the issue as follows:

At this time, we remain convinced that case law does not support the wholesale importing of evidentiary records from other Commission proceedings without additional steps. However, we

²⁸ See, e.g., “Mussey Grade Road Alliance Protest” (Oct. 30, 2015), pp. 5-7; “Protest of the Utility Consumers’ Action Network” (Oct. 30, 2015), pp. 4-5.

²⁹ See, e.g., “Mussey Grade Road Alliance Protest” (Oct. 30, 2015), p. 6; “Protest of the Utility Consumers’ Action Network” (Oct. 30, 2015), pp. 3-4.

³⁰ See San Diego Gas & Electric Company’s (U 902 E) Reply to Protests (Nov. 9, 2015), p. 7.

³¹ *Id.*

³² *Id.*

³³ “Prehearing Conference Statement of San Diego Gas & Electric Company (U 902 E)” (Feb. 19, 2016), p. 10.

agree that the contents of exhibits admitted into the evidentiary records of the Wildfire Investigation and the WEBA Proceeding could be relevant to this proceeding. To make review of these documents more efficient for the parties, we instruct SDG&E to submit these files as Supporting Documents in the Commission's E-File System ... None of these exhibits will be admitted into the evidentiary record without further steps by the parties. Admission of these exhibits will be handled on a case by case basis.³⁴

SDG&E submitted those files, as instructed, and exhibits from the OIIs were ultimately introduced and handled on a case by case basis, as the Scoping Memo envisioned. With respect to the Guejito Fire, witnesses from both SDG&E (Mr. Weim) and ORA (Mr. Stannik) presented testimony, and those witnesses were cross-examined at the hearing. Their written testimony and hearing testimony is in the record and is available to the Commission to consider in its decision in this matter. Further, in the post-hearing briefs, parties made various arguments about the meaning and weight to be accorded to the testimony and evidence, including various portions of the OII exhibits. That is the very opportunity SDG&E sought in its reply to protests and which the Scoping Memo granted.

³⁴ "Scoping Memo and Ruling of Assigned Commissioner and Assigned Administrative Law Judge" (Apr. 11, 2016), pp. 10-11.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, SDG&E respectfully requests that the Commission deny (1) the Cox Motion for Limited Party Status, and (2) the Cox Motion to Strike.

Respectfully submitted,

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July10, 2017

ATTACHMENT 1

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing **SAN DIEGO GAS & ELECTRIC COMPANY'S (U 902 E) NOTICE OF AVAILABILITY OF ITS APPLICATION FOR AUTHORIZATION TO RECOVER COSTS RELATED TO THE 2007 SOUTHERN CALIFORNIA WILDFIRES RECORDED IN THE WILDFIRE EXPENSE MEMORANDUM ACCOUNT** on all parties of record in A.09-08-020 by electronic mail and by U.S. mail to those parties who have not provided an electronic address to the Commission.

A copy was also sent via Federal Express to Chief Administrative Law Judge, Karen Clopton.

Executed this 25th day of September, 2015 at San Diego, California.

/s/ Jenny Norin

Jenny Norin



California
Public Utilities
Commission



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CALIFORNIA PUBLIC UTILITIES COMMISSION

Service Lists

PROCEEDING: A0908020 - SDG&E, EDISON, SOCAL
FILER: PACIFIC GAS & ELECTRIC COMPANY
LIST NAME: LIST
LAST CHANGED: JULY 10, 2015

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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of San Diego Gas & Electric Company
(U 902 E) for Authorization to Recover Costs Related to
the 2007 Southern California Wildfires Recorded in the
Wildfire Expense Memorandum Account (WEMA)

Application 15-09-____
(Filed September 25, 2015)

**SAN DIEGO GAS & ELECTRIC COMPANY'S (U 902 E)
NOTICE OF AVAILABILITY OF ITS APPLICATION FOR AUTHORIZATION TO
RECOVER COSTS RELATED TO THE 2007 SOUTHERN CALIFORNIA WILDFIRES
RECORDED IN THE WILDFIRE EXPENSE MEMORANDUM ACCOUNT**

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September 25, 2015

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of San Diego Gas & Electric Company
(U 902 E) for Authorization to Recover Costs Related to
the 2007 Southern California Wildfires Recorded in the
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**SAN DIEGO GAS & ELECTRIC COMPANY’S (U 902 E)
NOTICE OF AVAILABILITY OF ITS APPLICATION FOR AUTHORIZATION TO
RECOVER COSTS RELATED TO THE 2007 SOUTHERN CALIFORNIA WILDFIRES
RECORDED IN THE WILDFIRE EXPENSE MEMORANDUM ACCOUNT**

Pursuant to Rule 1.9(d) of the Commission’s Rules of Practice and Procedure, San Diego Gas & Electric Company hereby provides notice that it has electronically filed with the Commission’s docket office its Application for Authorization to Recover Costs Related to the 2007 Southern California Wildfires Recorded in the Wildfire Expense Memorandum Account (“Application”). The Application and testimony are available on SDG&E’s website at the following url:

<http://www.sdge.com/regulatory-filing/15691/sdge-wildfire-expense-memorandum-account-wema-proceeding>

The Application and testimony may also be obtained by contacting:

Shivani Ballesteros
Regulatory Case Manager
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San Diego, CA 92123
Telephone: (858) 637-7914
Email: sballesteros@semprautilities.com

DATED at San Diego, California, this 25th day of September, 2015.

Respectfully submitted,

By: /s/ Christopher M. Lyons

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